

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.: 10/780,510 Confirmation No.: 1384
Applicant(s): Mary Ann HETTICH
Filed: February 16, 2004
Art Unit: 3765
Examiner: HOEY, Alissa L.
Title: UNIVERSAL CHAP-STYLE COMPRESSION STOCKING

**REPLY BRIEF TRANSMITTAL
(PATENT APPLICATION – 37 C.F.R. § 1.193(b)(1))**

1. ☒ Transmitted herewith is the **REPLY BRIEF** in this application, with respect to the Examiner's Answer mailed on March 14, 2007.
2. ☐ Applicant claims small entity status.
3. ☒ Any fee or refund may be charged to Deposit Account 16-0605.

Respectfully submitted,



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.:	10/780,510	Confirmation No.:	1384
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Art Unit:	3765		
Examiner:	HOEY, Alissa L.		
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P.O. Box 1450
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REPLY BRIEF UNDER 37 CFR § 1.193

Appellant, within a two (2) month period from the March 14, 2007 mailing date of the Examiner's Answer, herein files a Reply Brief in accordance with the provisions of 37 CFR §1.193(b).

The following remarks are not an exhaustive review of the arguments previously made in the Appeal Brief but, rather, respond to each of the particular comments set forth in the Examiner's Answer.

First, regarding the Examiner's comments addressing the use of the term "slits" in the Appeal Brief, Appellant respectfully wishes to clarify any confusion which may have been caused. Russell (US 3,440,665) teaches a slit in a single stocking leg. Appellant's invention claims a therapeutic gradient compression stocking having two cutout portions in each stocking leg. Use of the term "slits" to describe Appellant's invention was not meant to be confusing or to introduce new matter. Rather, the term "cutout portion" should have been used when describing Appellant's invention and will be used from this point on.

Continuing to the more substantive portions of the Examiner's response, the Examiner maintains in the Answer that Russell teaches two slits, or cutout portions, in a single stocking leg and includes Figs. 1 and 2 of Russell to support this position. In particular, the Examiner argues that the single cutout portion actually constitutes two cutout portions on either side of the hip portion because they occur in the front and the back of Russell's stocking. The Examiner's

interpretation is contrary to the text of the Russell patent itself. Referring to the same figures cited by the Examiner (Figs. 1 and 2), col. 2, lines 22-26 of Russell state that “[t]he stocking 5 is formed with a slit at 21 (at the left of the waist and the right of the drawing) extending thru the waist portion 14 and into or thru (as exemplified) the hip portion 13 thereof; and the stocking 6 is formed with a slit at 22 (at the right of the waist and the left of the drawing) extending thru the waist portion 18 and into or thru (as exemplified) the hip portion 17 thereof.” (Emphasis added.) Thus, each stocking of Russell has one slit (“a slit”) whereas each stocking of the present invention has two cutout portions. Therefore, even if Russell and Fregeolle (US 3,975,929) were properly combinable, the combination still would not teach the claimed invention.

The Examiner also asserts that there is no limitation in the claims requiring a single stocking leg for Appellant’s invention. However, Claim 1 states that the stocking is “capable of being worn on either leg of the patient.” Stated differently, the stocking may be worn on one leg or the other, implying that a single stocking is worn on one leg at a time.

In another section of the Answer, the Examiner argues that the stocking garment of Russell is capable of being worn reversed so that the stockings are worn on either leg and that Appellant’s argument that the heavy seams of Russell would make it undesirable “does not limit the garment from being capable of doing so.” For obviousness to be properly established, however, a person of ordinary skill in the art must have a reason to combine the prior art elements in the manner claimed. Thus the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests a reason for the combination. As Appellant has previously argued, the heavy seams of Russell do not suggest the desirability of reversing the stocking garment of Russell, but rather suggest the undesirability of doing so. Therefore, it would not be obvious to reverse the stocking garment of Russell in order to allow the Russell garment to be worn on either leg.

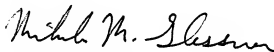
The Examiner also notes that Claim 1 describes Appellant’s stocking as a therapeutic gradient compression stocking only in the preamble, which carries little weight, and that Russell teaches all the structure of Claim 1 except the compression aspect. However, if the claim preamble, when read in the context of the entire claim, is necessary to give life and meaning to the claim, then it should be construed as if in the balance of the claim. MPEP § 2111.02. In

Appellant's case, reference is made to "the stocking" in the body of the claim, which refers back to the "compression stocking." Thus, Claim 1 of Appellant's invention is rightfully construed as being a "compression stocking."

Pursuant to the foregoing, as well as to the arguments contained in Appellant's Appeal Brief dated December 13, 2006, Appellant respectfully requests that all of the Examiner's rejections be reversed, and that the application be passed to issue at the earliest opportunity.

Appellant does not wish to participate in an oral hearing. The Appellant respectfully requests that the Board act on the papers submitted in making its determination.

Respectfully submitted,



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